IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3180 OF 2002

The Executive Engineer, Public Works Division, Chiplun and another).. Petitioners

Versus

Nayana Madhukar Salvi).. Respondent

Mr.A.P.Vanarse, Assistant Government Pleader, for the Petitioners.

Mr.R.S.Datar for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 27TH AUGUST 2004

P.C.:

. Mr.A.P.Vanarse for the Petitioners submits that the order dated 19th October 1994 passed by the Labour Court, Kolhapur in Complaint (ULP) No.71 of 1989 and the order dated 7th June 2001 passed by the Industrial Court, Kolhapur in Revision Application (ULP) No.216 of 1994 are erroneous as the Courts have not considered the issue whether Irrigation Department is an "Industry" or not. He places reliance on the judgment of the Apex Court in the case of *Executive Engineer (State of Karnataka)* vs. *K.Somasetty and others*, **1997 II LLJ 698**. This issue as to whether the Irrigation Department is an industry has not been raised either before the Labour Court or the Industrial Court in Revision. It has also not been

raised in the present Writ Petition. The Petitioners, therefore, cannot be permitted to raise this issue which is a mixed question of fact and law at this stage in the Petition.

2. The order challenged shows that the Respondent had worked for 240 days with the Petitioner and the service book which was produced shows that she was given artificial breaks. However, the Respondent had completed continuous service of 240 days within the twelve months preceding 6th March 1989 when her services came to an end. The Labour Court and the Industrial Court on this basis has accepted the case of the Respondent. The contention raised by the Petitioners that this must be treated as termination of service under Section 2(oo)(bb) of the Industrial Disputes Act, 1947 i.e. termination on expiry of fixed period of employment is unsustainable. I see no reason to differ from the findings recorded by the Labour Court and the Industrial Court. There is no dispute that Section 25F of the Industrial Disputes Act, 1947 has been breached. Hence, Writ Petition rejected.